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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

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Refer Reply To:
CC:CORP:B04
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Date: August 20, 2007

Legend

Distributing =

Controlled =

Shareholder A =

Business X =

State A =

State B =

State C =

State D =

State E =

State F =

x =

Dear :

This letter responds to your April 16, 2007 letter requesting rulings on certain federal income tax consequences of a proposed transaction. The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution (defined below in step ii): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code (the “Code”) and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

Summary of Facts

Distributing is a calendar year corporation engaged in Business X. Distributing conducts Business X directly, through its wholly owned subsidiaries and through contracts with other entities. Distributing conducts Business X in State A, B, C, D, E and F. Distributing has one class of stock outstanding that is owned equally by six shareholders. Financial information submitted by Distributing indicates that Business X has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

Proposed Transaction

Shareholder A and the remaining Distributing shareholders disagree on a number of fundamental matters relating to Distributing’s Business X in State A. The conflict between the shareholders is having an adverse effect on the day-to-day operations of Distributing. To eliminate the shareholder disputes, Distributing has proposed the following series of steps (collectively, the “Proposed Transaction”):

- (i) Distributing will form Controlled and contribute to Controlled all the assets and liabilities used in connection with Business X located in State A in exchange for all of the outstanding Controlled stock (the “Contribution”).

- (ii) Distributing will distribute all of its Controlled stock to Shareholder A in exchange for all of the Distributing stock held by Shareholder A (the "Distribution").
- (iii) In connection with the Distribution, Distributing and Controlled will enter into certain continuing transactions at fair market value limited to the use by Controlled of Distributing's training facilities and x department services.

Representations

Distributing, Controlled and Shareholder A each has made the following representations with respect to the proposed transaction:

- (a) The fair market value of the Controlled stock to be received by Shareholder A will be approximately equal to the fair market value of the Distributing stock surrendered.
- (b) No part of the consideration distributed by Distributing will be received by Shareholder A as a creditor, employee, or in any capacity other than that of a Distributing shareholder.
- (c) Distributing, Controlled and Shareholder A each will pay their own expenses, if any, incurred in connection with the Distribution.
- (d) The five years of financial information submitted on behalf of Distributing is representative of its present operations, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) Following the Distribution, Distributing and Controlled will each continue the active conduct of its respective business independently and with its separate employees, except as set forth in step (iii) above.
- (f) Except for obligations for payment from transactions or expense sharing arrangements between Distributing and Controlled, no intercorporate debt will exist between Distributing and Controlled at the time of, or after, the Distribution. Any such indebtedness will not constitute stock or securities.
- (g) The Distribution is being carried out for the following business purpose: to end shareholder disputes over the operation of Distributing and to resolve management, systemic and other problems that have arisen because of irreconcilable differences between Shareholder A and the remaining shareholders of Distributing. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(h) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more person will acquire, directly or indirectly, stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in either Distributing or Controlled (including any predecessor or successor of any such corporation).

(i) No person will hold a 50-percent or greater interest in the stock of Distributing or Controlled, after the Distribution, within the meaning of § 355(g), who did not hold such an interest immediately before the transaction.

(j) Neither Distributing nor Controlled is a “disqualified investment corporation” as defined in § 355(g)(2)(A).

(k) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(l) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution, or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(m) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed (as determined under § 357(d)) by Controlled plus any liabilities to which the transferred assets are subject.

(n) The liabilities to be assumed (as determined under § 357(d)) in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

(o) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(p) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(q) Payments made in connection with all continuing transactions between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(r) The total fair market value of the assets transferred from Distributing to Controlled will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d) by Controlled, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in the Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.

(s) Earnings and profits will be allocated between Distributing and Controlled in accordance with § 312(h) and § 1.312-10(a).

(t) For federal income tax purposes, the single class of Distributing common stock is stock of Distributing and is not stock of Controlled or any other wholly owned subsidiary of Distributing.

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows:

(1) The Contribution, followed by the Distribution will qualify as a reorganization under § 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" under § 368(b).

(2) No gain or loss will be recognized by Distributing on the Contribution (§ 361(a) and 357(a)).

(3) No gain or loss will be recognized by Controlled on the Contribution (§ 1032(a)).

(4) The basis of each asset received by Controlled will equal the basis of that asset in the hands of Distributing immediately before the Contribution (§ 362(b)).

(5) The holding period of each asset received by Controlled in the Contribution will include the period during which Distributing held that asset (§ 1223(2)).

(6) No gain or loss will be recognized by Distributing on the Distribution (§ 361(c)(1)).

(7) No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder A on the Distribution (§ 355(a)(1)).

(8) The aggregate basis of the Controlled stock in the hands of Shareholder A immediately after the Distribution will equal Shareholder A's aggregate basis in the Distributing stock surrendered in the Distribution allocated in the manner described in § 1.358-2.

(9) The holding period of the Controlled stock received by Shareholder A will include the holding period of the Distributing stock surrendered by the shareholder in exchange therefore, provided such stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(10) A proper allocation of earnings and profits between Distributing and Controlled will be made in accordance with § 312(h) and § 1.312-10(a).

Caveats

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding whether the Distribution: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of the Distributing corporation or the Controlled corporation or both (see § 355(a)(1)(B) and § 1.355-2(d), and (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the Distributing corporation or the Controlled corporation (see § 355(e) and § 1.355-7).

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this ruling letter should be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling. Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Associate Chief Counsel (Corporate)